

PROVIDING FOR THE STATUTORY DESIGNATION OF THE POSITION OF ASSISTANT SECRETARY OF THE INTERIOR FOR INDIAN AFFAIRS, ELIMINATE THE POSITION OF COMMISSIONER OF INDIAN AFFAIRS, MAKE CONFORMING AMENDMENTS, REPEAL UNNECESSARY PROVISIONS OF LAW REFERRING TO THE COMMISSIONER OF INDIAN AFFAIRS, AND FOR OTHER PURPOSES

MAY 14, 1984.—Ordered to be printed

MR. ANDREWS, from the Select Committee on Indian Affairs,
submitted the following

REPORT

[To accompany S. 1999]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1999) to provide for the statutory designation of the position of Assistant Secretary of the Interior for Indian Affairs, eliminate the position of Commissioner of Indian Affairs, make conforming amendments, repeal unnecessary provisions of law referring to the Commissioner of Indian Affairs, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Amendment No. 1. On page 2, line 15, at the conclusion of subsection 7(c), strike the period and add the following:

And provided further, that this shall not preclude independent, objective, administrative review of decisions of the Bureau of Indian Affairs by the Board of Indian Appeals.

Amendment No. 2. On page 8, line 24, beginning with the words "to read as", strike out all through page 9, line 3, and insert in lieu thereof the following:

by (1) deleting the words "Commissioner of Indian Affairs" and inserting in lieu thereof "Secretary of the Interior"; and (2) by deleting the words " , with the approval of the Secretary," both places they appear.

Amendment No. 3. On page 9, immediately following subsection 4(k), as amended, insert a new subsection 4(l) as follows:

(l) The tenth paragraph under the subheading "COMMISSIONER" under the heading "I. GENERAL PROVISIONS" in the Act of April 30, 1908 (35 Stat. 72, 25 P.S.C. 295) is amended by deleting the words "Commissioner of Indian Affairs" before the proviso and inserting in lieu thereof "Secretary of the Interior" and by deleting the words "prescribed by him, subject to the supervision of the Secretary of the Interior" and inserting in lieu thereof "prescribed by the Secretary".

Amendment No. 4. Beginning on page 9, line 4 through line 21, reletter subsections 4(l) through 4(n) to read 4(m) through 4(o).

Amendment No. 5. On page 10, strike all of lines 1 through 7.

PURPOSE

By letter of September 6, 1983, the Department of the Interior sent to the Congress proposed legislation to statutorily designate the position of Assistant Secretary for Indian Affairs, to eliminate the position of Commissioner of Indian Affairs, and to make conforming amendments or repeal unnecessary provisions of law referring to the Commissioner of Indian Affairs at the Department of the Interior. S. 999 was introduced by Senator Mark Andrews by request on October 25, 1983, and the bill was referred to this Committee for consideration.

BACKGROUND AND NEED

Assistant Secretary/Commissioner

The position of Commissioner of Indian Affairs was codified in the Revised Statutes of 1873 (R. S. Sec. 463; 25 U.S.C. 2) which was derived from the Act of July 9, 1832. When the Department of the Interior was established in 1849, this office was moved from the War Department to Interior where it has remained ever since.

The duties of the Commissioner are described in the broadest terms:

The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations. (25 U.S.C. 2.)

Over the years, many statutes were enacted which specifically referred to this position and vested specific authorities in the Commissioner. Other statutes vested authorities in lesser positions within the Bureau of Indian Affairs. The position of Commissioner of Indian Affairs is filled by appointment by the President, subject to confirmation by the Senate.

By 1950 Reorganization Plan No. 3, provided for under general legislation authorizing the reorganization of the Executive Branch, all functions of all officers of the Department of the Interior and all functions of all agencies and employees of the Department of the Interior were, with two exceptions, transferred to the Secretary of the Interior, with power to redelegate these functions as he saw fit.

In 1976, the top executive position for Indian Affairs in Interior was elevated by administrative decision to Assistant Secretary for Indian Affairs. Assistant Secretary Forrest Gerard was nominated by the President and confirmed by the Senate for this position. In addition, the President nominated and the Senate confirmed Mr. William Hallett to the position of Commissioner of Indian Affairs. Thus, both the first and second level executives for the Bureau of Indian Affairs were Presidentially appointed.

Under the Reagan Administration, only the position of Assistant Secretary for Indian Affairs has been filled. The position of Commissioner has remained vacant.

Proposal for amendment or repeal of existing statutes

S. 1999 proposes to amend a significant number of statutes in which a reference to Commissioner of Indian Affairs or a subordinate officer appears. A number of these statutes are outmoded and in need of revision or repeal. As an example of this point, Sec. 3(3) would amend Section 2156 of the Revised Statutes (25 U.S.C. 229), known as the "Indian depredation" statute, which provides that any Indian tribe in "amity with the United States" shall be responsible for the depredations of any of its members against citizens of the United States. Sec. 3(6) would amend an 1894 statute relating to sending Indian children outside a state for purposes of education (25 U.S.C. 286); Sec. 3(7) and (8) have to do with tuition fees for white (non-Indian) children attending Indian day schools or boarding schools (25 U.S.C. 288, 289).

The Department of the Interior is presently engaged with the Law Revision Counsel's Office in the House of Representatives in a project to recodify Title 25 of the U.S. Code. It does not appear that the amendments proposed in S. 1999 are necessary to give these outstanding statutes legal efficacy. Such amendments were not required when the 1950 Reorganization Plan transferred the Commissioner's functions to the Secretary of the Interior, nor was revision required when the position of Assistant Secretary for Indian Affairs was administratively established. Nevertheless, it appears that amendment or repeal of these outmoded statutes will enhance and simplify the codification effort in the Law Revision Counsel's Office.

Nothing in these amendments or repeals is intended to affect existing law. The amendments are simply intended to conform the language of existing law to current usage, particularly as such statutes may refer to administrative positions other than the Secretary of the Interior. The repeals apply only to statutes which have been superseded by subsequent statutes or which have no application under existing circumstances.

An analysis of the proposed amendments and repeals is attached to this memorandum.

LEGISLATIVE HISTORY

S. 1999 was introduced by Senator Mark Andrews, by request, on October 25, 1983, and was referred to the Select Committee on Indian Affairs for consideration. A hearing was held by the Select Committee on February 3, 1984. A companion bill, H.R. 4290, was introduced in the House of Representatives on November 2, 1983, by Mr. Udall,

for himself and Mr. McNulty, Mr. Lujan, and Mr. McCain. The bill was referred to the House Committee on Interior and Insular Affairs for consideration. There have been no hearings on the House side. At a business meeting of the Select Committee on May 9, 1984, by a unanimous vote of a quorum present, S. 1999 was ordered reported with amendments.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

On May 9, 1984, the Select Committee on Indian Affairs, by a unanimous vote of a quorum present, recommends that the Senate pass S. 1999, as amended.

AMENDMENTS

The Select Committee on Indian Affairs, at its business session on May 9, 1984, adopted a number of amendments to S. 1999. These amendments are set forth in full at the beginning of this report. Their purpose is explained in the Section-by-Section Analysis that follows.

SECTION-BY-SECTION ANALYSIS

Section 1(a) of S. 1999 would amend section 462 of the Revised Statutes (25 U.S.C. 1) to provide for the Presidential appointment of an Assistant Secretary of the Interior for Indian Affairs in lieu of a Commissioner of Indian Affairs. Such Assistant Secretary would be responsible for the conduct of Indian Affairs as prescribed by the Secretary and would receive compensation prescribed by law for Assistant Secretaries of the Interior.

Section 1(b) would amend 5 U.S.C. 5316, which applies Level V of the Federal Executive Salary Schedule to certain positions, by deleting the Commissioner of Indian Affairs from the listed positions.

Section 1(c) would provide that any regulation, contract, agreement or other document containing any reference to the Commissioner of Indian Affairs shall be deemed to refer to the Assistant Secretary of the Interior for Indian Affairs.

Section 2(a)(1) would repeal the Act of June 5, 1942 (56 Stat. 312) as amended (25 U.S.C. 2a) which authorizes the Secretary to appoint assistant or deputy commissioners.

Section 2(a)(2) would repeal the provisions in the Act of March 3, 1909 (35 Stat. 783; 25 U.S.C. 10) which allows the Commissioner of Indian Affairs to designate an employee to sign letters for him or the assistant commissioner.

Section 2(b) would amend the Act of August 8, 1946 (60 Stat. 939; 25 U.S.C. 1a), relating to the delegation of powers and duties by the Secretary of the Interior and Commissioner of Indian Affairs, to conform such provisions to the Assistant Secretary's position in lieu of the Commissioner.

Section 3 would delete the titles of Commissioner of Indian Affairs and Commissioner where they appear in the following statutes and insert in lieu thereof the title of Secretary of the Interior:

(1) Section 7 of the Act of May 17, 1882 (22 Stat. 88; 25 U.S.C. 3) requires the Commissioner to compile statutes regulating duties of Indian agents and inspectors.

(2) Section 464 of the Revised Statutes (25 U.S.C. 8) requires all Indian Affairs related accounts and vouchers for claims and disbursements to be transmitted to the Commissioner for administrative examination and then to the General Accounting Office for settlement.

(3) Section 2156 of the Revised Statutes (25 U.S.C. 229) provides a recourse for those citizens whose property has been injured by Indians.

(4) Section 5 of the Act of August 15, 1876 (19 Stat. 200; 25 U.S.C. 261) grants the Commissioner of Indian Affairs sole power and authority to appoint Indian traders and prescribe trading regulations.

(5) A provision of section 1 of the Act of March 3, 1901 (31 Stat. 1066), as amended by section 10 of the Act of March 3, 1903 (32 Stat. 1009; 25 U.S.C. 262) requires those persons desiring to trade with Indians to establish to the satisfaction of the Commissioner of Indian Affairs that they are proper persons to engage in such trade.

(6) Section 11 of the Act of August 15, 1894 (28 Stat. 313; 25 U.S.C. 286) requires that a certificate of consent be sent to the Commissioner of Indian Affairs before sending the Indian child to a school out of State.

(7) Provisions in the Act of March 1, 1907 (34 Stat. 1015, 1016, 1018; 25 U.S.C. 288) allow white children to be admitted in Indian day schools under regulations prescribed by the Commissioner of Indian Affairs.

(8) A provision in the Act of March 3, 1909 (35 Stat. 783; 25 U.S.C. 289) allows white children to be admitted to Indian boarding schools on payment of prescribed tuition fees under rules prescribed by the Commissioner of Indian Affairs.

(9) Section 1 of the Act of May 29, 1908 (35 Stat. 444; 25 U.S.C. 404) allows allotted lands to be sold on the petition of the allottee or his heirs.

(10) A provision in the Act of June 21, 1906 (34 Stat. 327; 25 U.S.C. 40a) allows Indian allotted lands under any law or treaty without the power of alienation and within a reclamation project approved by the Secretary to be sold and conveyed.

(11) Section 1 of the Act of May 24, 1950 (64 Stat. 190; 25 U.S.C. 442) authorizes and ratifies acceptances of cash settlements by the Commissioner of Indian Affairs for livestock loans.

(12) Section 11 of the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 471) authorizes appropriations for loans to Indians for tuition in vocational and trade schools.

(13) Section 2 of the Act of August 28, 1937 (62 Stat. 92; 25 U.S.C. 544) requires the credit of \$500 to each eligible Klamath Indian from the capital reserve fund for the Klamath Indians and authorizes certain purposes for the expenditure of such funds.

Section 4(a) amends section 463 of the Revised Statutes (25 U.S.C. 2), relating to the duties of the Commissioner, by deleting "The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to" and inserting in lieu thereof "The Secretary of the Interior shall, subject to".

Section 4(b) amends sections 2, 3 and 4 of the Act of June 26, 1892 (27 Stat. 272; 273; 25 U.S.C. 5, 6 and 7) by deleting references to the Commissioner of Indian Affairs and inserting in lieu thereof the Secre-

tary of the Interior. Other minor technical amendments are made to reflect this change. Section 2 of the 1892 Act directs the Commissioner to maintain a record of deeds executed by Indians requiring Presidential or Secretarial approval. Section 3 of the 1892 Act requires the Commissioner to cause a seal to be made for authenticating and certifying documents as evidence. Section 4 of the 1892 Act requires the Commissioner to impose fees, as appropriate, for furnishing certified copies of records.

Section 4(c) further amends a provision of the Act of April 30, 1908 (35 Stat. 72) as amended (25 U.S.C. 295), which requires the Commissioner to supervise all expenditures of appropriations for school purposes, by deleting the title of Commissioner of Indian Affairs and inserting in lieu thereof the Secretary of the Interior. In addition, section 4(c) amends another provision of the Act of April 30, 1908 (35 Stat. 73; 25 U.S.C. 12) which authorizes the Commissioner to send a special agent or representative to negotiate commutation of annuities due under treaties, by deleting all references to Commissioner of Indian Affairs and inserting in lieu thereof the Secretary of the Interior.

Section 4(d) amends section 1 of the Act of February 14, 1920 (41 Stat. 414; 25 U.S.C. 53), which authorizes a disbursing officer to designate a clerk to act during times when he is unable to perform duties. Such amendment would delete "Any disbursing agent of the Indian Service, with the approval of the Commissioner of Indian Affairs, may authorize a clerk employed in his office to act in his place" and insert in lieu thereof "Any disbursing agent of the Bureau of Indian Affairs, with the approval of the Secretary of the Interior, may authorize a clerk employed in his office to act in his place".

Section 4(e) further amends section 2103 of the Revised Statutes, as amended (25 U.S.C. 81), which requires contracts with Indian tribes or individual Indians to be approved by the Secretary of the Interior and the Commissioner of Indian Affairs, by retaining the requirement for Secretarial approval and deleting the reference to the Commissioner of Indian Affairs.

Section 4(f) amends section 2104 of the Revised Statutes (25 U.S.C. 82), which provides for payments under approved contracts, by requiring the voucher statement to be filed with the Secretary of the Interior in lieu of the Commissioner of Indian Affairs. In addition, the words "the Secretary of the Interior shall determine therefrom whether, in the Secretary's judgment," would be inserted in lieu of "the Secretary of the Interior and the Commissioner of Indian Affairs shall determine therefrom whether, in their judgment,".

Section 4(g) amends section 2106 of the Revised Statutes (25 U.S.C. 84), which imposes certain restrictions on any assignments of approved contracts, by deleting the words "the consent of the Secretary of the Interior and the Commissioner of Indian Affairs" and inserting in lieu thereof "the consent of the Secretary of the Interior".

Section 4(h) amends section 4 of the Act of August 14, 1894. (28 Stat. 312; 25 U.S.C. 99), which authorizes the Commissioner to contract for supplies in advance of appropriations for the next fiscal year, by deleting the words "The Commissioner of Indian Affairs is authorized to advertise in the spring of each year for bids, and to enter into

contracts, subject to the approval of the Secretary of the Interior, for goods and supplies for the Indian Service" and inserting in lieu thereof "The Secretary of the Interior with respect to the Bureau of Indian Affairs, and the Secretary of Health and Human Services, with respect to the Indian Health Service, are each authorized to enter into contracts for goods and supplies." The reference to the Indian Health Service is consistent with the transfer of authority in 42 U.S.C. 2001(a).

Section 4(i) further amends a provision in section 1 of the Act of March 3, 1893 (27 Stat. 631), as amended (25 U.S.C. 178), which requires certain fees on behalf of Indian parties in contests under public land laws to be paid by the Commissioner. Such amendment would delete the words "said fees shall be paid by the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, on an account stated by the proper land officers through the Commissioner of the General Land Office" and insert in lieu thereof "said fees shall be paid by the Secretary of the Interior from funds appropriated for the administration of Indian Affairs".

Section 4(j) amends the last proviso of section 2133 of the Revised Statutes, as amended (25 U.S.C. 264), which requires the licensing of white persons employed by an Indian Trader. Such amendment would read as follows: "And provided further, That no person other than an Indian shall be employed as a clerk by any Indian trader, except such as trade with said Five Civilized Tribes, unless licensed to do so by the Secretary of the Interior."

Section 4(k) amends the provision in section 1 of the Act of April 21, 1904 (33 Stat. 211; 25 U.S.C. 292), which grants the Commissioner of Indian Affairs authority to suspend or discontinue Indian schools, sell the facilities, and invest the proceeds in other school facilities, by deleting the words "Commissioner of Indian Affairs" and inserting in lieu thereof "Secretary of the Interior"; and by deleting the words "with the approval of the Secretary," both places they appear.

Section 4(l) amends the Act of April 30, 1908 (35 Stat. 72, 25 U.S.C. 295) by deleting in the 10th paragraph the words "Commissioner of Indian Affairs" before the proviso and inserting in lieu thereof "Secretary of the Interior", and by deleting the words "prescribed by him, subject to the supervision of the Secretary of the Interior" in inserting in lieu thereof "prescribed by the Secretary".

Section 4(m) amends the provision in the Act of June 21, 1906 (34 Stat. 328; 25 U.S.C. 302), which directs the Commissioner to select and designate an Indian Reform School, by deleting the words, "The Commissioner of Indian Affairs, under the direction of the Secretary of the Interior," and inserting in lieu thereof "The Secretary of the Interior".

Section 4(n) further amends section 3 of the Act of February 8, 1887 (24 Stat. 389), as amended (25 U.S.C. 333), which authorizes allotments under the Indian General Allotment Act to be made by special allotting agents, superintendents or agents in charge of the respective reservation and to be certified to the Commissioner. Such amendment would delete the words "to the Commissioner of Indian Affairs, in duplicate, one copy to be retained in the Indian Office and

the other to be transmitted to the Secretary of the Interior for action, and to be deposited in the General Land Office" and insert in lieu thereof "in duplicate to the Secretary of the Interior for his action, one copy to be retained in the Bureau of Indian Affairs and one copy to be deposited with the Bureau of Land Management".

Section 4(o) amends the second proviso in the nineteenth paragraph of section 1 of the Act of August 1, 1914 (38 Stat. 586; 25 U.S.C. 376) which authorizes persons appointed or designated by the Secretary or the Commissioner as special examiners in heirship cases to administer oaths in their investigations. Such amendment would delete "the Secretary of the Interior or the Commissioner of Indian Affairs" and insert "the Secretary of the Interior".

Section 4(p) further amends section 206(a) (1) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5616(a) (1)) by including the Assistant Secretary of the Interior for Indian Affairs in lieu of the Commissioner of Indian Affairs as a member of the Coordinating Council on Juvenile Justice and Delinquency Prevention.

Section 5 of the draft bill provides for the repeal of the following provisions:

(1) The archaic provision, which was intended to do away with the defunct "Indian Agent" system (there have been no such Agents since 1908), in the paragraphs with the subheading "Indian Agents Proviso" under the heading "II. General Officers and Employees" in the Act of March 1, 1907 (34 Stat. 1015, 1020) as amended (25 U.S.C. 66):

The Commissioner of Indian Affairs, with the approval of the Secretary of the Interior may devolve the duties of any Indian agency or part thereof upon the superintendent of the Indian school located at such agency or part thereof whenever in his judgment such superintendent can properly perform the duties of such agency. And the superintendent upon whom such duties devolve shall give bond as other Indian agents.

The pay of any superintendent who performs agency duties in addition to those of his superintendency may be increased by the Commissioner of Indian Affairs, in his discretion, to an extent not exceeding \$300 per annum.

(2) The archaic provision (see relevant provisions in 41 U.S.C. 20 and 31 U.S.C. 44, 49, 54, and 67(c)) in the proviso in section 7 of the Act of March 3, 1875 (18 Stat. 450; 25 U.S.C. 96):

And provided further, That copies of all contracts made by the Commissioner of Indian Affairs, or any other officer of the government, for the Indian service, shall be furnished to the Second Auditor of the Treasury before any payment shall be made thereon.

(3) The archaic provision (i.e., the BIA no longer issues food, clothing, or supplies to Indian people) in section 2109, Revised Statutes (25 U.S.C. 146):

Whenever the issue of food, clothing, or supplies of any kind to Indians is provided for, it shall be the duty of the agent or commissioner issuing the same, at such issue thereof, whether it be both food and clothing, or either of them, or of any kind of supplies, to report to the Commissioner of Indian Affairs the number of Indians present and actually receiving the same.

(4) The archaic provision (i.e., there has not been a "Superintendent of Indian Schools" for many years; also see 25 U.S.C. 2006) in section 10 of the Act of March 2, 1889 (25 Stat. 1003; 25 U.S.C. 272) :

There shall be appointed by the President, by and with the advice and consent of the Senate, a person of knowledge and experience in the management, training, and practical education of children, to be Superintendent of Indian Schools, whose duty it shall be to visit and inspect the schools in which Indians are taught in whole or in part from appropriations from the United States Treasury, and report to the Commissioner of Indian Affairs, what, in his judgment, are the defects, if any, in any of them, in system, in administration, or in means for the most effective advancement of the pupils therein toward civilization and self-support, and what changes are needed to remedy such defects as may exist, and to perform such other duties in connection with Indian schools as may be prescribed by the Secretary of the Interior.

(5) The archaic provision (see preceding item) in the last proviso in the seventh paragraph under the heading "Current and Contingent Expenses" in the first section of the Act of March 3, 1905, (33 Stat. 1048, 1049; 25 U.S.C. 272a) :

The Superintendent of Indian Schools shall perform such other duties as may be imposed upon him by the Commissioner of Indian Affairs, subject to the approval of the Secretary of the Interior.

(6) The archaic provision (see 25 U.S.C. 472) in the penultimate paragraph under the heading "SUPPORT OF SCHOOLS" in section 1 of the Act of June 7, 1897 (30 Stat. 62, 83; 25 U.S.C. 274) :

That hereafter the Commissioner of Indian Affairs shall employ Indian girls as assistant matrons and Indian boys as farmers and industrial teachers in all Indian schools when it is practicable to do so.

(7) The archaic provision (i.e., the BIA no longer distributes food and clothing) in the second paragraph under the subheading "President" under the heading "I. General Provisions" in the Act of June 21, 1906 (34 Stat. 325, 326; 25 U.S.C. 279) :

Mission schools on an Indian reservation may, under rules and regulations prescribed by the Commissioner of Indian Affairs, receive for such Indian children duly enrolled therein, the rations of food and clothing to which said children would be entitled under treaty stipulations if such children were living with their parents.

(8) The archaic and unnecessary provision (see relevant provisions in 25 U.S.C. 231 and 282) in the tenth paragraph in section 18 of the Act of June 30, 1913 (38 Stat. 96; 25 U.S.C. 285):

The Commissioner of Indian Affairs is authorized in his discretion to withhold any annuities or other payments due to Osage Indian minors, above six years of age, whose parents fail, neglect, or refuse to place such minors in some established school for a reasonable portion of each year and to keep such children in regular attendance thereof. The Commissioner of Indian Affairs is authorized to make such rules and regulations as may be necessary to put this provision into force and effect.

(9) The archaic provision (i.e., the BIA has not had "superintendents of irrigation" for many years) in the last proviso in the third paragraph of section 1 of the Act of April 4, 1910 (36 Stat. 271; U.S.C. 384):

The Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, may employ superintendents of irrigation who shall be skilled irrigation engineers, not to exceed seven in number.

Section 6 amends 18 U.S.C. 3055, relating to officers appointed by the Commissioner or the Secretary and their powers to suppress Indian liquor traffic, by deleting the words "Commissioner of Indian Affairs, or".

Section 7 provides that nothing S. 1999 would diminish or repeal any of the authorities transferred to the Surgeon General or the Secretary of Health and Human Services pursuant to the Act of August 5, 1954 (68 Stat. 674; 42 U.S.C. 2001-2004).

Section 8 provides that any Assistant Secretary for Indian Affairs in office on the date of enactment of S. 1999 shall be considered to have been duly appointed.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 1999, as amended, as provided by the Congressional Budget Office, is set forth below.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 11, 1984.

Hon. MARK ANDREWS,
*Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1999, a bill that would provide for the statutory designation of the position of Assistant Secretary of the Interior for Indian Affairs and other purposes, as amended and ordered reported by the Senate Select Committee on Indian Affairs, May 9, 1984.

The Congressional Budget Office has determined that enactment of this bill would not result in any additional costs to either the federal government or state and local governments. In addition to establish-

ing the Assistant Secretary position, the bill would eliminate the position of Commissioner of Indian Affairs. The Assistant Secretary position has already been established administratively, and the Commission position is currently not filled.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ERIC HANUSHEK
(For Rudolph G. Penner).

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1999 will have a minimal impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee received the following communication from the Department of the Interior setting forth executive agency recommendations relating to S. 1999.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 9, 1984.

HON. MARK ANDREWS,
*Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This replies to your request for our views on S. 1999, a bill "To provide for the statutory designation of the position of Assistant Secretary of the Interior for Indian Affairs, eliminate the position of Commissioner of Indian Affairs, make conforming amendments, repeal unnecessary provisions of law referring to the Commissioner of Indian Affairs, and for other purposes."

We recommend enactment of S. 1999. We note that S. 1999 is identical to draft legislation transmitted to the Congress by the Department on September 6, 1983.

S. 1999 would provide statutory recognition of the current administrative designation of the position of "Assistant Secretary of the Interior for Indian Affairs" from our existing statutory six assistant secretaries. It would also eliminate the statutory authority for the position of Commissioner of Indian Affairs. Additionally, S. 1999 would provide a number of conforming technical amendments to laws and would repeal certain unnecessary statutory provisions containing references to the Commissioner of Indian Affairs.

The statutory designation of an Assistant Secretary of the Interior for Indian Affairs will more accurately reflect the Department's responsibility for Indian affairs and the place that this responsibility occupies within the structure of the Department. Recognition of this position is in accord with administrative actions which have raised

the Department's responsibility for Indian affairs to the Assistant Secretary level within the structure of the Department, reporting directly to the Secretary on the same basis as do the other Assistant Secretaries of the Department. The Assistant Secretary is able to work full time towards the improvement of economic and social conditions of the Indian people, and assist in the development of their full potential. Currently, one of the primary responsibilities of the Assistant Secretary is to help implement the National policy of Indian self-determination set forth in the Indian Self-Determination and Education Assistance Act, and reiterated in the President's Policy Statement of January 24, 1983.

It is not contemplated that elimination of the post of Commissioner will require the restructuring of the Bureau itself. We propose to continue the current arrangement under which the operational direction of the Bureau of Indian Affairs (formerly the responsibility of the Commissioner) has been conducted by the Deputy Assistant Secretary for Operations.

S. 1999 would also amend all statutes codified in title 25 of the United States Code which make reference to the Commissioner of Indian Affairs. These amendments clarify that the duties and authorities concerning the Indian people are the responsibility of the Secretary of the Interior. Under existing law all statutory functions of the Commissioner of Indian Affairs (and of other officials of the Department of the Interior) were transferred to the Secretary of the Interior. Therefore, these amendments do not alter the current legal status. However, enactment of legislation eliminating the position of Commissioner of Indian Affairs would conform the language of these statutes.

Section 5 of S. 1999 would repeal rather than amend certain provisions that include references to the position of Commissioner, and that we have identified as unnecessary or archaic. An analysis of this section is enclosed.

The Office of Management and Budget has advised that it has no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

JOHN W. FRITZ,
Secretary.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states as follows: It is the opinion of the Committee that it is necessary to dispense with the requirements of this subsection to expedite the business of the Senate.

The amendments and repeals which will be affected through enactment of S. 1999 are cosmetic in nature. The repeals are of provisions of law that are archaic and no longer have application. The amendments conform existing law to delete references to the Commissioner of Indian Affairs and substitute references to the Secretary of the Interior to whom all authority was transferred by the 1950 Reorganization Plan No. 3. These changes are fully explained in the Section-by-Section Analysis.